

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENNETH LAW,

Plaintiffs,

vs.

E.K. McDANIEL, *et al.*,

Defendants.

3:07-CV-0262-ECR-VPC

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

April 2, 2009

This Report and Recommendation is made to the Honorable Edward C. Reed, Jr., United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and I.R IB 1-4.

Before the court is defendant William Eleby's motion for summary judgment (#60), plaintiff's motion requesting defendant Eleby be dismissed from claim (#64), and defendant Eleby's memorandum in support of plaintiff's motion to dismiss Eleby as a defendant with prejudice (#66). The court has thoroughly reviewed the record and the motions and recommends that the District Court enter and order dismissing defendant William Eleby with prejudice.

Kenneth Law ("plaintiff"), a *pro se* inmate, is committed to the custody of the Ohio Department of Rehabilitation and Correction ("ODRC"). Plaintiff was transferred to Ely State Prison pursuant to an interstate compact agreement because plaintiff was a witness in two trials stemming from an Ohio prison riot (#1). Defendant William Eleby is Chief of the Bureau of Classification of the ODRC (#60). In that role, he is responsible for plaintiff's placement. *Id.*

On March 3, 2009, defendant Eleby filed a motion for summary judgment (#60). Plaintiff responded to that motion by filing his own motion requesting that defendant Eleby be dismissed with prejudice (#64), and defendant Eleby immediately filed a memorandum in support of plaintiff's motion (#66). The court finds that based upon the foregoing, the parties have effectively stipulated to the dismissal of this case against defendant Eleby with prejudice.

1 Therefore, the court recommends that the District Court enter and order dismissing this case with
2 prejudice as to defendant Eleby pursuant to Fed. R. Civ. P. 41(a).

3 The parties are advised:

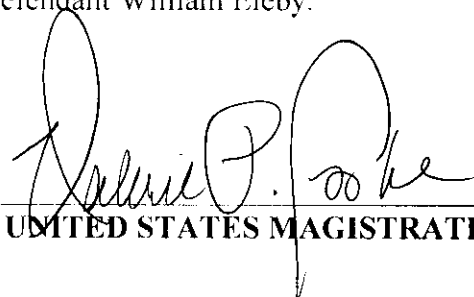
4 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule 1B 3-2 of the Local Rules of Practice,
5 the parties may file specific written objections to this report and recommendation within ten days
6 of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and
7 Recommendation" and should be accompanied by points and authorities for consideration by the
8 District Court.

9 2. This report and recommendation is not an appealable order and any notice of appeal
10 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's
11 judgment.

12 **RECOMMENDATION**

13 **IT IS THEREFORE RECOMMENDED** that the District Court enter an order
14 **DISMISSING** this case **with prejudice** as to defendant William Eleby.

15 **DATED:** April 2, 2009.

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18 **UNITED STATES MAGISTRATE JUDGE**
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